



ARIZONA STATE SENATE
Fifty-Second Legislature, Second Regular Session

FACT SHEET FOR H.B. 2088

schools; assessments; surveys; informed consent

Purpose

Requires written informed consent from a parent prior to the administration of surveys that investigate the attitudes, behaviors, beliefs, experiences, opinions or thoughts of a pupil or group of pupils.

Background

The Family Educational Rights and Privacy Act (FERPA) is a federal law enacted in 1974 that addresses the privacy of student education records. Under the law, parents have certain rights to their children's education records and these rights transfer to the student when he or she reaches 18 years of age or attends a school beyond the high school level. Students to whom the rights have transferred are known as *eligible students*.

Parents or an eligible student have the right to review the student's education records kept by a school and request that a school correct records that the parent or eligible student believes are inaccurate or misleading. Generally, schools must keep student information private unless they have written permission from the parent or eligible student to release any information from a student's education record.

Schools may disclose student education records, without consent, to the following parties or under the following conditions: 1) school officials with legitimate educational interest; 2) other schools to which a student is transferring; 3) specified officials for audit or evaluation purposes; 4) appropriate parties in connection with financial aid to a student; 5) organizations conducting certain studies for or on behalf of the school; 6) accrediting organizations; 7) to comply with a judicial order or lawfully issued subpoena; 8) appropriate officials in cases of health and safety emergencies; and 9) state and local authorities, within a juvenile justice system, pursuant to specific State law (34 Code of Federal Regulations § 99.31). Education records are records, files, documents, and other materials which contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution (U.S. Department of Education).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

Surveys

1. Requires each school district, school and charter school to provide written notice to and obtain written informed consent from, the parent before administering to any pupil any survey (Survey) that becomes a part of the pupil's permanent education record and that solicits personal information about the pupil, the pupil's family or the pupil's household, including Surveys concerning any of the following:
 - a) critical appraisals of another person with whom a pupil has a close relationship;
 - b) gun or ammunition ownership;
 - c) illegal, antisocial, self-incriminating or demeaning behavior;
 - d) income or other financial information;
 - e) legally recognized privileged or analogous relationships, such as relationships with a lawyer, physician or member of the clergy;
 - f) medical history or medical information;
 - g) mental health history or mental health information;
 - h) political affiliations, opinions or beliefs;
 - i) pupil biometric information;
 - j) the quality of home interpersonal relationships;
 - k) religious practices, affiliations or beliefs;
 - l) self-sufficiency;
 - m) sexual behavior or attitudes; or
 - n) voting history.
2. Limits a parent's written informed consent to the specific Survey referenced in the official written notice and states that consent does not extend to any subsequent Survey.
3. Requires consent only from the pupil if the pupil is at least 18 years of age.
4. Prohibits school districts, charter schools, schools or school employees from surveying pupils or collecting any pupil data relating to a Survey without written informed consent.
5. Requires school districts, schools or charter schools to approve and authorize Surveys.
6. Prohibits school employees from administering a Survey without written authorization from the school district, school or charter school.
7. Applies this act to Surveys:
 - a) regardless of the stated purpose of the Survey;
 - b) regardless of the quantity or percentage of questions that solicit data;
 - c) including written, digital or verbal Surveys or any other method of Survey or data collection; and
 - d) including national, state or multistate assessments or Surveys.
8. Exempts the following from this act:
 - a) mental health screenings or the identification of or programming for children with disabilities or gifted pupils;

- b) class instruction, discussion or assignment on subjects within the purview of the course, if written or spoken statements by a pupil do not become a part of the pupil's educational record; and
 - c) private schools.
9. Prohibits the imposition of a penalty on a pupil or parent who does not participate in a Survey and states participation in those Surveys is not required:
- a) to demonstrate that a pupil has met competency requirements for any grade level, course or subject;
 - b) for a pupil to qualify for placement into any grade level, course or subject, including college or university placement tests;
 - c) for a pupil to be promoted to the next grade;
 - d) for a pupil to receive credit for any course or as part of a letter grade for any course;
 - e) for a pupil to graduate from high school;
 - f) for a pupil to obtain a high school equivalency diploma; or
 - g) for a pupil to participate in any course, program or activity offered to pupils who participate in the Survey.
10. Allows a parent to elect in writing for that pupil to participate in a Survey.
11. States a parent is not required to respond to a written notice provided by a school district, school or charter school.
12. States a parent who has not responded to a written notice is deemed to have not consented to participation in the Survey.
13. Requires a school district, school or charter school to provide an alternative educational activity for any pupil whose parent does not consent to participate in a Survey.
14. Counts students who are provided an alternative educational activity towards daily attendance and average daily membership.
15. Prohibits responses to a Survey to be included:
- a) as part of a school achievement profile and corresponding letter grade classification or similar school rating system;
 - b) in the Education Learning and Accountability data System or similar system;
 - c) in the Student Accountability Information System or similar system; or
 - d) in any school, administrator or teacher rating system.
16. Prohibits the imposition of a penalty or grant of a reward to a school employee, school district, school or charter school based on the pupil participation rate in a Survey.

Written Notice

17. Requires any written notice provided by a school district, school or charter school to be printed in 12 point font or larger and include the following:
- a) the name of the school district, school or charter school that approved the Survey;

- b) the name of the Survey;
 - c) the date or dates on which the Survey is administered;
 - d) the method or methods of collecting data for the Survey relating to the above matters;
 - e) the approximate number of hours the Survey is administered;
 - f) the type of data collected;
 - g) the reasons for the collection of the data; and
 - h) a statement indicating the parent's written informed consent is limited to the specific Survey referenced in the notice and does not extend to any subsequent Survey.
18. States if a computer is used to administer or record data from the Survey, the notice shall include a statement of whether the data is transmitted electronically from the computer or location where the Survey is administered.
19. Requires the parent's initial on the right side of the written notice to affirmatively acknowledge each of the following:
- a) that participation in the Survey is voluntary and that written parental consent is required before the pupil may participate;
 - b) that pupils who do not participate in the Survey shall be provided an alternative educational activity;
 - c) that penalties will not be imposed against a pupil or the parent of a pupil who does participate in the Survey;
 - d) whether the pupil's personally identifiable data collected by the Survey will be anonymous, aggregated and de-identified; and
 - e) the names of the federal and state agencies, institutions and third parties that will have access to the data collected by the Survey, whether these parties will keep this data private or share it with other parties and whether these parties will destroy this data when the pupil is no longer serviced by the school district, school or charter school or when the pupil reaches 18 years of age.
20. Directs the written notice to require and provide space for the following:
- a) the names of the pupil and parent; and
 - b) the parent's signature and date of signature.
21. Requires the school district or charter school to retain the written notice in physical or electronic form for two years after the date of the Survey.
22. States the written notice is not valid without all of the above information.

Violations

23. Holds any school district, charter school or school that fails to comply with any requirement of this act liable for damages to the injured party.
24. Awards, for an individual action, the following sums for liability:
- a) at least \$250 plus the costs of the action and reasonable attorney fees for the first violation;

- b) at least \$500 plus the costs of the action and reasonable attorney fees for the second violation involving the same pupil; and
 - c) at least \$1000 plus the costs of the action and reasonable attorney fees for the third violation involving the same pupil.
25. Allows the court or jury to award punitive damages in addition to the above.
26. Considers each violation separate if it involves a different Survey or a different version or administration of the same Survey relating to the above matters.
27. Allows persons injured by a violation to:
- a) commence a civil action in superior court; or
 - b) request the Attorney General (AG) commence a civil action on the person's behalf.
28. Directs the AG to respond to the request within 30 days and allows persons denied a request from the AG to proceed with a civil action.
29. Requires guilty parties to pay any monetary awards to the injured party or parties.
30. Requires damages to be assessed and paid in the case of an admission of guilt or a settlement before a formal conviction of a first or second violation.
31. Affords any school district, charter school or school that fails to comply with this act the opportunity to cure the failure to comply within a reasonable period of time and without penalty.

Arizona Education Learning and Accountability System (AELAS)

32. Prohibits nontest data from inclusion in longitudinal, student level data unless approved in a public meeting of the State Board of Education (SBE) and linked to SBE's homepage.
33. Requires third-party contracts to state the date the data is returned to the Department of Education (ADE) and destroyed by the third-party.
34. Prohibits the third-party from sharing or selling student data or using student data in any way that is not stated in the contract.
35. Directs the third-party to certify under oath that the pupil data collected has been destroyed.
36. Holds third-parties liable for violations.

Assessments

37. Requires SBE to ensure statewide achievement assessments only collect types of pupil nontest data that are approved by SBE at a public meeting and published on SBE's homepage.

38. Directs SBE to post in a prominent position on its homepage a link to nontest indicators entitled *What nonacademic data does the State of Arizona collect about Arizona pupils?*.
39. Includes on the website the types of data collected, the reasons for the collection and the entities with which the data is shared.
40. Places all responsibility on a third-party assessment contractor (Contractor) for any violation of state, federal or local law, regardless of intention, or if the violation was associated with the use of any assessment instrument offered by the third party.
41. Requires any contract entered into between SBE or ADE and any Contractor to specify the following:
 - a) the types of pupil level nontest data the Contractor will collect; and
 - b) the date all pupil level data will be delivered to SBE or ADE and destroyed by the Contractor which shall be within 180 days after the collection of the data.
42. Prohibits any third-party assessment contractor from:
 - a) soliciting or collecting pupil nontest data unless that data is approved in a public meeting by SBE and linked on SBE's homepage;
 - b) using pupil data for research or any other purpose not stated in the contract during the time the Contractor possess the data;
 - c) selling pupil data; and
 - d) keeping or storing any pupil data after the contractual data the data is to be returned to SBE or ADE and destroyed by the Contractor.
43. Requires Contractors to certify under oath that the pupil data collected has been destroyed.
44. Holds Contractors liable for violating these provisions and subjects Contractors to the same penalties and procedures as those prescribed for school districts, charter schools and schools.

Miscellaneous

45. Defines terms.
46. Makes technical and conforming changes.
47. Becomes effective on the general effective date.

House Action

ED	2/17/16	DPA	5-1-1
3 rd Read	3/1/16		34-24-2

Prepared by Senate Research
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CB/lis